


Submitted by  
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**DykEMA**  
**Public Employee Retirement  
Health Care Funding Act  
House Bill No. 4073**



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Law Firm of Dykema  
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California | Illinois | Michigan | Texas | Washington, D.C.  
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### Purpose of the Act

- ♦ To create trusts under Section 115 of the IRC for funding postretirement health benefits for current annual liabilities for existing retirees
- ♦ To meet accounting and financial reporting in accordance with GASB statements 43 and 45
- ♦ To act as a repository for additional contributions to pre-fund postretirement health benefits

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### Purpose of the Act

#### Overlap of 115, OPEB & GASB:



Section 115      OPEB Plan      GASB

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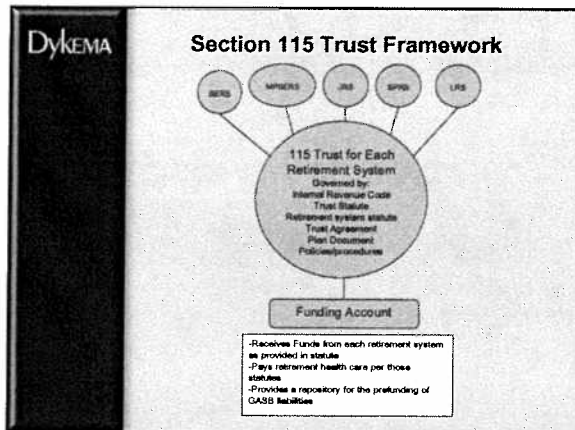
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### Section 115

- ❖ Section 115 of the IRC allows governmental employers to establish and contribute to an irrevocable trust for funding and pre-funding retiree health care on a tax-free basis
- ❖ Act includes provisions to meet the requirements of Section 115 and GASB

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### 115 and GASB Provisions (Sections 4-8)

- ❖ Irrevocable Contributions (Sec. 4)
- ❖ Restricted to Essential Function of State Government (Sec. 5)
- ❖ Anti-alienation Protections (Sec. 6)
- ❖ Exclusive Benefit Restrictions (Sec. 7)
- ❖ Dissolution Requirements (Sec. 8)

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### Governance (Section 3)

- ❖ The Act would establish a section 115 trust for each system and set terms for participating and contributing (Section 3(1))
- ❖ Retirement board members would act as trustees (Section 3(2))
- ❖ State Treasurer would invest the assets of the trust (Section 3(4))

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### Governance

- ❖ Trustees permitted to adopt policies and procedures for the trust (Section 3(2))
- ❖ Written Plan Document would govern Funding Account within the Trust (Section 11)
- ❖ Trust Agreement would be adopted by each set of trustees (Section 9)

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### Governance (Section 9)

- ❖ Trust Agreement would include provisions for the following:
  - Creation and purpose
  - GASB and Section 115 language
  - Management and operation
  - Various accounts
  - Powers and duties of trustees

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## Funding Account in the Trust

### ❖ Funding Account

- Receives funds and pays for health care as provided by retirement statute
- Serves as a repository for pre-funding GASB liabilities

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## Contributions: Eligibility, Crediting, Interest (Section 10)

- ❖ State, employers, members and others could contribute
- ❖ Mandatory crediting to funding account
- ❖ Mandatory crediting of applicable earnings

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## Additional Provisions of Act

- ❖ Aggregate contractual rights provision for retirement health care benefits for past members to extent assets exist in Funding Account (Section 3(6))
- ❖ Separate reserves for specified groups that cannot be used for any other members (Section 4(2))

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**Additional Provisions of Act**

- ❖ Annual financial statements for the trust are required (Section 3(9))
- ❖ Funds in the funding account can be treated toward the ARC for GASB purposes (Section 11(3))
- ❖ IRS Savings Clause and Severability Clause (Section 12)

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**Additional Provisions of Act**

- ❖ State tax exemption for trust assets and income (Section 14)
- ❖ Limitation of liability for trustees (Section 15)
- ❖ Section 16 ?
- ❖ Guarantee of benefit (Section 17)
- ❖ Correction of errors (Section 18)

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**Circular 230 Disclaimer**

- ❖ To comply with U.S. Treasury regulations, we advise you that any discussion of Federal tax issues in this communication was not intended or written to be used, and cannot be used, by any person (i) for the purpose of avoiding penalties that may be imposed by the Internal Revenue Service, or (ii) to promote, market or recommend to another party any matter addressed herein.

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